

Interswitch - Routing Designated by the ULS Purchaser (Direct or Tandem Routed)			
Line Routing EO1 ---> EO2	Trunk Routing	Usage Compensation	Additional Notes
4) ULS _a ---> ULS _a 5) ULS _a ---> OS/DA 6) ULS _a ---> ULS _b 7) ULS _a ---> POTS ¹	ULS carrier <i>designates</i> trunk groups for traffic delivery, but the entity <i>providing</i> transport, which may or not be ULS provider, decides routing and facilities used.	ULS carrier pays ULS usage charge to reach designated trunk terminations. Entity providing transport compensates Ameritech for transport circuits (if purchased from Ameritech) or trunk terminations (if transport independently provided).	Applicable transport charges are traffic-neutral. For instance, a carrier purchasing from Ameritech dedicated circuits between any two network locations would compensate Ameritech for those circuits (per mile) and associated terminations. If the carrier self-supplies circuits, then it compensates Ameritech for the termination of those circuits at Ameritech's CO locations. The fact that the circuits/terminations carry ULS minutes would not affect the charge.

Interexchange			
Line Routing EO1 <-----> POP	Trunk Routing	Usage Compensation	Additional Notes
8) ULS _a ---> IXC 9) IXC ---> ULS _a 10) ULS _a ---> IXC 11) IXC ---> ULS _a	Trunk routing for access transport are designated by the IXC from its POP to an End Office. Unless IXC desires different treatment, these trunks would carry traffic of all ULS/POTS ¹ carriers providing service from the EO.	Ameritech receives ULS usage rate from ULS purchaser for all minutes, including interexchange minutes destined to/from an IXC POP from the ULS carrier. ULS carrier bills IXC for access to/from its subscribers (RIC/CCLC/LS).	IXC pays for transport between its POP and the EO irrespective of whether traffic originates/terminates with POTS or ULS subscribers at that EO. Transport between POP and EO is, at the option of the IXC, available from Ameritech or others in the same manner as today.

"BAU": Traffic Between Ameritech Subscribers (POTS) and other Carriers			
Line Routing EO1 <----> EO2	Trunk Routing	Usage Compensation	Additional Notes
12) POTS ---> ULS ₁	Trunk routing established in CO (may include direct or tandem routing).	Retail billed to POTS customer. ULS usage charge is billed to ULS carrier. ³	Ameritech is billed by ULS-based entrant for termination to the ULS carriers' subscribers. ³
13) POTS ---> CLEC	Trunk routing established in CO (may include direct or tandem routing provided by Ameritech or CLEC).	Retail billed to POTS customer.	Ameritech would be billed by the CLEC for termination to the CLEC subscriber.
14) POTS ---> IXC	Trunk routing designated by IXC for traffic to/from that CO.	Ameritech would bill IXC for access (RIC, CCLC, LS) and transport if Ameritech is transport provider.	

³ Because the ULS usage charge and the termination charge should be identical, administrative systems may be designed to ignore this usage.

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January 9, 1997

Ms. Dorothy Wideman
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
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Lansing, MI 48909

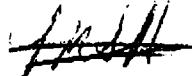
Re: MPSC Case No. U-11104

Dear Ms. Wideman:

Enclosed for filing in the above-captioned matter, are an original and 15 copies of Michigan Cable Telecommunications Association's Response to Ameritech Michigan's Submission of Information Claiming to be in Compliance with the Competitive Checklist and Proof of Service for same.

Very truly yours,

Fraser Trebilcock Davis & Foster, P.C.



Michael S. Ashton

MSA/csp
Encl.

cc: All Counsel of Record (w/Encl.)

CAA
MAH
JMD
BC
MS
RBR
PVL
KAF
NS
LO
JW

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion,
to consider Ameritech Michigan's compliance
with the competitive checklist in Section 271
of the Telecommunications Act of 1996.

Case No. U-11104

THE MICHIGAN CABLE TELECOMMUNICATIONS ASSOCIATION'S
RESPONSE TO AMERITECH MICHIGAN'S SUBMISSION OF INFORMATION
CLAIMING TO BE IN COMPLIANCE WITH THE COMPETITIVE CHECKLIST

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Date: January 9, 1997

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of the Telecommunications Act of 1996.

Case No. U-11104

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF INGHYAM)

The undersigned, being first duly sworn, deposes and states that he served papers as follows:

1. Document(s) served: Michigan Cable Telecommunications Association's Response to Ameritech Michigan's Submission of Information Claiming to be in Compliance with the Competitive Checklist and Proof of Service for same
2. Served upon: See Attached List
3. Method of service: U.S. First Class Mail, unless noted as Hand Delivery
4. Date served: January 9, 1998

Connie S. Pyle

Subscribed and sworn to before me this 9th
day of January, 1997.

Cathy L. Frazee, Notary Public
Baton acting in Ingham County, Michigan
My Commission Expires: 7/12/97

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I. INTRODUCTION

On or about December 16, 1996, Ameritech Michigan filed a document entitled "Ameritech Michigan's Submission of Information" which claims that Ameritech Michigan is in compliance with the competitive checklist set forth in Section 271¹ of the Communications Act of 1934, as amended, (the "Federal Act") and is entitled to enter the in-region interLATA market. In support of its submission, Ameritech Michigan filed, among other documents, three affidavits which, when combined, total over 150 pages of information. In addition, Ameritech Michigan filed testimony, apparently originally filed in an Illinois proceeding, of six different witnesses which, when combined, total over 250 pages.

Under an earlier MPSC Order, Ameritech Michigan was requested to file this Submission of Information with the MPSC at least 45 days before it submitted its request to the FCC for in-region interLATA relief. (August 28, 1996 Order Establishing Procedures, MPSC Case No. U-11104.) Under this same Order, interested parties were given 14 business days, or here until January 9, 1997, to respond to Ameritech Michigan's claim that it was in compliance with the competitive checklist. Despite the MPSC's Order, Ameritech Michigan did not give the MPSC 45 days to consider its submission or even allow interested parties an opportunity to first submit a response before Ameritech Michigan filed for relief with the FCC. Instead, on January 2, 1997 -- just 17 days and only 9 business days after submitting its information to the MPSC -- Ameritech filed its application with the FCC claiming that sufficient facilities-based competition exists in Michigan to satisfy Section 271(c)(1)(A) of the Federal Act (commonly referred to as "Track A") and thus to allow Ameritech Michigan to enter the in-region interLATA market. As a result of Ameritech Michigan's FCC filing, this

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¹47 USC § 271.

Commission only has until January 22, 1997 to file its written consultation with the FCC regarding Ameritech Michigan's compliance with the competitive checklist and entry into the in-region interLATA market. (FCC Public Notice dated January 2, 1997.)

Given the MPSC's earlier statement that it is more interested in the "quality of the information than the quantity" and the expectation that other parties will make extensive filings, The Michigan Cable Telecommunications Association ("MCTA")² will focus only on the issues critical to the cable industry as it seeks to bring facilities-based competition to the local telephone market. First, this Commission should not verify Ameritech Michigan's compliance with the requirements of the 14-item competitive checklist because Ameritech Michigan has failed to satisfy the third item which requires nondiscriminatory access to poles, ducts, conduits and rights-of-way owned or controlled by Ameritech Michigan at just and reasonable rates. 47 USC § 271(c)(2)(B)(iii). Second, the lack of any facilities-based competitor serving residential customers prevents Ameritech Michigan's claim for relief under Track A of the Federal Act and makes Ameritech Michigan's request to be found in compliance with the checklist premature. Third, the FCC has not promulgated all the rules necessary to fully implement the non-accounting safeguards under Sections 271 and 272 of the Federal Act which are necessary to limit anticompetitive conduct by Ameritech Michigan. Fourth, given these and other factors, significant impediments still exist to the development of meaningful competition in the local telephone market and the grant of in-region interLATA

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²The MCTA has been long recognized by this Commission as being "well suited to [participate] in proceedings on behalf of the cable television industry in Michigan." (Order of January 29, 1985 in U-7620 at p. 3.) Cable television companies are expected to be a significant source of facilities-based competition for Ameritech Michigan. MCTA's members, such as Continental Cablevision and Comcast Corporation, have affiliates which have received licenses to provide basic local exchange services in Michigan and other MCTA members are actively preparing to enter the telecommunications market in Michigan.

relief to Ameritech Michigan is not in the public interest at this time.³ Thus, the MPSC should not certify compliance with the competitive checklist and should request the FCC to reject Ameritech Michigan's request for entry into the in-region interLATA market because it is contrary to the public interest.

II. NONDISCRIMINATORY ACCESS TO AMERITECH MICHIGAN'S POLES AND RIGHTS-OF-WAY AT JUST AND REASONABLE RATES IS NOT AVAILABLE IN MICHIGAN

A. Ameritech Michigan Is Not Providing Access To Its Poles At Just And Reasonable Rates In Accordance With The Requirements Of Section 224

1. *Under Section 224, Michigan Has Opted To Regulate Pole Rates*

The Federal Act provides that the FCC will regulate the rates, terms and conditions for pole attachments unless a state certifies to the FCC that it will regulate pole attachments. (47 USC § 224(c).) The FCC has recognized that Michigan has submitted the necessary certification to regulate pole attachments. (See, Public Notice, 2 FCC RCD 7535 dated December 30, 1987; Comcast Cablevision and Continental Cablevision of Michigan, Inc v Consumers Power Company, 11 FCC RCD 5412 (June 9, 1995). As a result, Michigan law governs the pole attachment rates for Ameritech Michigan.

2. *The MTA, As Amended, Adopted The Same Statutory Language For Pole Attachment Rates Which Serves As The Basis For The Application For The "FCC Formula"*

In 1995, the Michigan Legislature amended the Michigan Telecommunications Act, 1991 PA 179, as amended, being MCL 484.2101, *et seq.*; MSA 22.1469(101), *et seq.*, (the

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³While 47 USC § 271(d)(2)(B) only requires the FCC to consult with the MPSC with respect to compliance with the competitive checklist, nothing in the Federal Act would suggest that the MPSC should not make a recommendation to the FCC regarding the public interest standard that the FCC must address in deciding Ameritech Michigan's application as set forth in 47 USC § 271(d)(3)(C). In fact, the MPSC notices in this case requesting information regarding general market conditions suggest that it will do so.

"MTA") and adopted the specific statutory language for determining just and reasonable pole rates for cable and telecommunications providers as set forth in the Federal Pole Attachment Act of 1987. Section 361 of the MTA states:

"(2) A provider shall establish the rates, terms and conditions for attachments by another provider or cable service.

"(3) The rates, terms and conditions shall be just and reasonable. A rate shall be just and reasonable if it assures the provider recovery of not less than the additional costs of providing the attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the attachment, by the sum of the operating expenses and actual capital costs of the provider attributable to the entire pole, duct or right-of-way." MCL 484.2361(2) and (3); MSA 22.1469(361)(2) and (3).

The Michigan Legislature essentially duplicated the language of the Federal Pole Attachment Act of 1987, which, in relevant part, states:

"For purposes of subsection (b) of this section, a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way." 47 USC §224(d).

Having adopted this statutory language, the Michigan Legislature must be presumed to have had knowledge of the earlier FCC interpretations of this language and desired to have that interpretation applied as a matter of Michigan law.⁴ See, Scholten v Rhoades, 67 Mich App

⁴After the passage of Section 361 of the MTA, the Federal Act was amended. One of the amendments to the Federal Act was to phase-in a new methodology for utilities to determine pole attachment rates for telecommunications providers. See, 47 USC § 224(e). This amendment to the Federal Act, however, left unchanged the methodology to determine

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736; 242 NW2d 509 (1976); Beading v Governor of Michigan, 106 Mich App 530; 308 NW2d 269 (1981).

3. *Based On 1995 Data, The Maximum Pole Attachment Rate For Ameritech Michigan Under The MTA Is \$1.20 Per Pole Per Year*

The methodology adopted by the Michigan Legislature is highly refined and is based on quantifiable and publicly reported costs. The FCC has precisely identified the particular accounts from a providers' FCC annual reports to be utilized in determining the maximum pole rate for that provider. (See, Amended Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles, 2 FCCR 4387, 4402-4404 (1987), and letter from Chief of Accounting and Audit Division, Common Carrier Bureau, FCC to Paul Glist, 5 FCCR 3898 (1990); Attached As Exhibits 1 and 2.) As a result, the calculation of the maximum pole attachment rate for Ameritech Michigan is straightforward and based on its publicly reported costs.

Using Ameritech Michigan's 1995 ARMIS data filed with the FCC, the maximum pole rate for Ameritech Michigan under the methodology imposed by the MTA is \$1.20 per pole/per year. (The workpapers supporting this straightforward calculation are attached as Exhibit 3.) The 1995 ARMIS data produces a slightly lower rate than Ameritech Michigan's 1993 ARMIS data which supported a rate of \$1.28 per pole/per year. (See, Exhibit I-45b from MPSC Case Nos. U-10741, U-10826 & U-10831, attached here as Exhibit 4.) The principal reason for the reduction is the decrease in the net investment per bare pole due to the depreciation reserve for poles.

pole rates for cable providers which is set forth at 47 USC § 224(d). It is the language from 47 USC § 224(d) which was adopted by the Michigan Legislature to be applied to both cable and telecommunications providers. Therefore, the recent amendment to the Federal Act is of no consequence to determining pole rates in Michigan.

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4. *Ameritech Michigan Has Filed Two Different Tariffs Which Exceed The Maximum Rate Allowed under The MTA*

On or about May 30, 1996 (prior to the filing of Ameritech's most recent tariff), Ameritech Michigan submitted a pole attachment tariff to the MPSC which stated that its pole rate was \$2.88 per pole/per year. MCTA, realizing that this pole rate was excessive, contacted Ameritech Michigan in an effort to cooperatively resolve any issues regarding the proper calculation of Ameritech Michigan's pole rates under the MTA. As a result of these contacts, Ameritech Michigan did allow MCTA to review its workpapers under a confidentiality agreement. In response, MCTA alerted Ameritech Michigan to the errors contained in Ameritech Michigan's calculations and provided Ameritech with the proper worksheets showing the correct calculation based on the information submitted by Ameritech.

Shortly thereafter, the MPSC sent a letter to Ameritech, expressly declining to accept for filing Ameritech Michigan's tariff establishing the \$2.88 rate. (See, Exhibit 5.) Rather than contest this rejection, Ameritech Michigan withdrew its tariff. (See, Exhibit 6.)

In September of 1996, Ameritech Michigan submitted a new tariff to the MPSC with a pole attachment rate of \$1.97. Ameritech failed to provide any justification of any kind to support this new rate or to explain why Ameritech should be allowed to charge a rate which exceeds the maximum level allowed under the MTA.

5. *Ameritech Michigan Has "Stonewalled" MCTA's Efforts To Resolve Issues Regarding The Proper Calculation Of Pole Rates Under The MTA*

In October of 1996, MCTA's counsel verbally, and then in writing, contacted counsel for Ameritech Michigan seeking an explanation as to the manner in which the \$1.97 rate was calculated. No response was received from Ameritech Michigan regarding this letter.

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Therefore, on November 21, 1996, MCTA's counsel again wrote to Ameritech Michigan requesting information as to its new proposed pole attachment rate of \$1.97. Again, no response was received from Ameritech Michigan regarding this letter.

After Ameritech's December 16, 1996 filing in this case, Ameritech Michigan's Assistant General Counsel, John T. Lenahan, sent a letter to all parties inquiring whether there were any issues which could be resolved by the parties to narrow the disputes in this case. As a result of this letter, MCTA's counsel once again reminded Ameritech Michigan of its failure to provide any information or justification regarding the manner in which it calculated the \$1.97 pole rate. Despite Ameritech's feigned willingness to resolve disputes at issue in this docket, it was not until this week that Ameritech finally provided MCTA's counsel with a two-page workpaper showing how Ameritech calculated its \$1.97 pole rate. Interestingly, the workpaper was dated September 26, 1996. Moreover, as explained in the following section, Ameritech's calculation was totally flawed.

6. *Ameritech's Most Recent Pole Attachment Rate Of \$1.97 Is Unsupported By Any Evidence And Unlawful*

The workpaper belatedly supplied by Ameritech Michigan is not and never was part of the record in this case. In its compliance filing, Ameritech Michigan offers no explanation, whatsoever, with respect to the manner in which its \$1.97 pole rate was calculated. As a result, Ameritech Michigan has failed to meet its burden of proof that this checklist item is satisfied.

Even if Ameritech Michigan were to attempt to belatedly supplement this record with this workpaper, it would not support Ameritech Michigan's \$1.97 pole rate. For example, in calculating the maintenance costs of its poles, Ameritech Michigan erroneously included

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the pole rents which Ameritech paid to other utilities for attachments on poles owned by those other utilities! Obviously, those costs are totally irrelevant to the proper calculation of the rate which Ameritech Michigan should charge for attachments to its own poles. This is clearly inconsistent with the FCC methodology adopted in Section 361 of the MTA. (See, Letter from Kenneth Moran, FCC Common Carrier Bureau Accounting & Audits to Paul Glist, June 22, 1990, 5 FCC Rcd 3898 (1990); UACC Midwest, Inc. d/b/a United Artists Cable Mississippi Gulf Coast v South Central Bell Telephone Company, PA 91-0005 through PA 91-0009, DA 95-1363 (Common Carrier Bureau) (June 15, 1995).) Given the unambiguous manner in which the Michigan Legislature adopted the FCC formula and its straightforward application to Ameritech Michigan's actual costs as reported in its 1995 ARMIS filing, there is simply no legal basis for Ameritech's pole attachment rate.

7. *Ameritech Michigan Continues To Attempt To Collect An Unlawful Pole Rate And Is Dunning Cable Companies Based On A Tariff Rejected By The MPSC And Withdrawn By Ameritech Michigan*

Both cable service providers and telecommunications providers under the MTA are subject to the same pole attachment rate. MCL 484.2361(2); MSA 22.1469(316)(2). If American Michigan is billing telecommunications providers in the same manner as cable companies, this Commission should be seriously alarmed because cable companies are receiving bills and are being dunned by Ameritech Michigan based on a pole rate of \$2.88. Without any justification whatsoever, Ameritech Michigan is attempting to impose rates based on an ineffective tariff which the Commission rejected and Ameritech Michigan itself withdrew. Moreover, Ameritech Michigan's new (but still unlawful) rate of \$1.97 is a tacit admission that the \$2.88 rate is excessive. Yet, Ameritech Michigan continues to send dunning notices seeking to collect the \$2.88 pole rate for 1996. (See, Exhibit 7.) Clearly,

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Ameritech Michigan is not applying a just and reasonable rate for pole attachments in its service territory.

8. Conclusion: Ameritech Michigan Is Not Providing Access To Its Poles At Just And Reasonable Rates

Michigan has certified to the FCC that it regulates pole attachment rates. Section 361 of the MTA expressly defines a "just and reasonable" rate and Ameritech's rate fails to meet this definition. As set forth in Section 361 of the MTA, the Michigan Legislature has adopted the FCC methodology for determining the maximum allowable pole rate. That methodology is straightforward, based on publicly available data and allows Ameritech Michigan to charge a rate no greater than \$1.20 per pole/per year. Yet, Ameritech Michigan is seeking to impose a \$1.97 rate and in fact is continuing to attempt to collect a rate of \$2.88, based on an ineffective tariff which the MPSC rejected and Ameritech itself withdrew. As a result, Ameritech Michigan is not providing access to its poles at just and reasonable rates and, therefore, is not in compliance with the competitive checklist.

B. Within The State Of Michigan, Access To The Poles And Rights-Of-Way Owned And Controlled By Ameritech Michigan Is Not Available On A Nondiscriminatory Basis

I. Many Local Municipalities Are Imposing Extensive Regulations And Franchise Fees On New Providers

A number of Michigan municipalities have enacted telecommunications ordinances which would require new telecommunications providers to obtain franchises, pay franchise fees and comply with other onerous conditions before being permitted to provide telecommunications services within their municipality. For limited example, the City of Troy passed a telecommunications ordinance proposing a franchise formation fee of \$10,000.00 and

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an annual fee which could equal five percent of gross revenue. Section 9(1) of Troy's Telecommunication Ordinance states:

"(1). . . a Grantee shall pay:

- (a) A Franchise formation fee (i) for Franchises of \$10,000.00; or, (ii) for Licenses of \$2,000.00; and
- (b) An annual fee equal to the lesser of (i) 5 % of its gross revenue, or (ii) an amount determined as set forth in subsection (2)." (Exhibit 8.)

Yet, these are not the only onerous conditions imposed by the Troy Ordinance, which further provides:

A. "The rates and charges of a Grantee . . . shall be subject to regulation by the City Changes to rates and charges shall only be made after notice, hearing, and other requirements provided by law." (Chapter 62, paragraph 8.)

B. ". . . a Telecommunication System shall be interconnected with other Telecommunication Systems within the City for the purpose of facilitating the provision of universal service in the City. . . . The cost of such interconnection shall be equally shared by each Grantee." (Chapter 62, paragraph 12(4).)

C. "However, if any such state or federal law or regulation shall require a Grantee to perform any service, or shall allow a Grantee to perform any service, or shall prohibit a Grantee from performing any service, in conflict with the terms of the License or Franchise, or of any law or regulation of the City Notwithstanding such conflict, the Grantee shall comply with the terms of the License or Franchise unless released by the City." (Chapter 62, paragraph 10(3).)

D. "An accurate and comprehensive file shall be kept by a Franchise Grantee of all Subscriber and user complaints regarding the Telecommunication System. A procedure shall be established by the Grantee by the time of installation of the system to quickly and reasonably remedy complaints to the satisfaction of the City. Complete records of Grantee's actions in response to all complaints shall be kept. These files and

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records shall remain open to the public during normal business hours." (Chapter 62, paragraph 15(3).)

E. "... if the Grantee . . . provides a new service, facility, equipment . . . to any other community which it serves within the State of Michigan, the same shall be provided in or to the City." (Chapter 62, paragraph 12(1).)

F. "In the event a Franchise Grantee enters into an agreement with a public entity in Oakland County, Macomb County, or Wayne County, excluding Detroit, and agrees to a formula or method for determining franchise fees which if applied in the City would yield greater revenues than the formula or method set forth in the franchise for the right to operate a Telecommunications System the Grantee shall grant a pro rata credit to its Troy subscribers so as to cause a redistribution of the excess to Troy's subscribers." (Chapter 62, paragraph 27(1).)

G. "The Grantee of a Franchise shall annually file with the City Clerk fifteen copies (15) of its annual financial reports, including its annual income statement, a balance sheet, and a statement of its properties devoted to Telecommunication System operations. A Grantee shall submit such reasonable information as may be requested by the City with respect to its property and revenues, expenses or operations within the City. All information provided to the City shall be maintained by the City as proprietary and confidential." (Chapter 62, paragraph 15(2).) (Exhibit 8.)

Likewise, the City of Dearborn has an ordinance which requires a telecommunications franchise and franchise fee based on the value of the telecommunications services being provided. Section 1.10 of the Dearborn Ordinance states:

"In recognition of the unique character of telecommunications franchises, a franchise fee shall be determined through a negotiated franchise fee procedure based upon the value of services for similar agreements and other pertinent factors." (Exhibit 9.)

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At least one other city requires the provision of free fiber optics by new providers. In addition, a number of other cities are considering or attempting to impose similar franchise regulations and fees.

2. *Ameritech Michigan Claims To Be Exempt Or Grandfathered From Municipal Franchise Regulations And Fees*

Ameritech Michigan claims to be exempt from municipal franchise regulation as a result of its incorporation in 1904 under PA 129 of 1883. Therefore, Ameritech Michigan denies any obligation to apply for franchises from local municipalities, to comply with the extensive municipal franchise regulations or to pay franchise fees. Ameritech Michigan in its Submission of Information states:

"Ameritech Michigan also has a state-granted franchise by virtue of its incorporation in 1904 under Public Act 129 of 1883 and that of its predecessor corporation, Michigan Telephone Company, dating back to 1877. . . . a telephone company with a state-granted franchise need not obtain a local municipality's franchise to provide intrastate telecommunications services nor to carry out construction necessary to provide those services . . .

As a result of its incorporation under an Act passed in 1883, Ameritech Michigan denies that it is required to obtain municipal franchises, comply with municipal franchise regulations or pay municipal franchise fees.

3. *Local Municipalities Are Not Imposing These Extensive Franchise Regulations On Ameritech Michigan Because Of Its Claimed Grandfathered Status*

Local municipalities are not imposing their telecommunication franchise ordinances (which contain extensive regulations and franchise fees) on Ameritech Michigan. For example, the City of Troy, which enacted its Telecommunications Ordinance in December of 1995, to date, has not required Ameritech Michigan to obtain a franchise, comply with any

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franchise regulations or pay any franchise fee. The reason for Troy's failure to do so is either Troy's belief that Ameritech Michigan is entitled to grandfathered status or, in the alternative, that it would be too expensive to mount a legal challenge against Ameritech Michigan's claim to grandfathered status. In discussing Troy's claimed right to require local franchises, Troy Councilman Randy Husk stated:

"Husk smiled when he said, 'We all recognize at this time we can't apply these rights to regulate phone service of Ameritech.' He did speculate that if municipalities joined together, he suspected they could overturn Ameritech's protected status that dates back to 1904. He said one city couldn't fight them alone." (Exhibit 10.)

As a result, Ameritech Michigan is not being required to comply with the Troy ordinance.⁵

Similarly, the City of Dearborn has not sought to impose its franchise requirements on Ameritech Michigan. TCG is currently seeking relief in federal court because the City of Dearborn is insisting that TCG obtain a municipal telecommunications franchise and pay a franchise fee, when the City of Dearborn is not requiring the same franchise or franchise fee from Ameritech Michigan. In its complaint, TCG alleges:

"Dearborn has not applied its Regulatory Ordinance against Michigan Bell, TCG Detroit's major competitor, and the dominant local telecommunication's provider in Dearborn. It does not charge the dominant provider the "franchise fees" it demands of TCG Detroit. It does not demand a "franchise" or a "franchise agreement" under its Regulatory Ordinance from Michigan Bell as it demands of TCG Detroit. Nonetheless, TCG Detroit's major competitor and dominant provider continues to operate freely in Dearborn without restriction, without local franchise regulation, and without payment of

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⁵Recently, it was reported by the Wallstreet Journal that Troy had asked Ameritech Michigan to apply for a municipal franchise. It is far from clear whether Troy's mere request to Ameritech Michigan will result in Troy insisting on Ameritech Michigan's compliance with its ordinance.